

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

LENIN GARCIA,) Civil No. 12cv718 AJB (NLS)
Plaintiff,)
v.) ORDER ADOPTING REPORT AND
CLUCK, *et al.*,) RECOMMENDATION; DISMISSING
Defendants.) PLAINTIFF'S EIGHT AMENDMENT
) CLAIM; AND GRANTING PLAINTIFF
) LEAVE TO FILE AN AMENDED
) COMPLAINT
)

Pending before the Court is Defendants' motion to dismiss Plaintiff's Eighth Amendment claim. (Doc. No. 18-1). Plaintiff opposes the motion. (Doc. No. 19). The Court referred the matter to Magistrate Judge Nita L. Stormes, who issued a Report and Recommendation ("R&R") recommending the Court dismiss Plaintiff's Eighth Amendment claim and grant Plaintiff leave to amend his complaint to cure the deficiencies set forth in the R&R. (R&R, Doc. No. 23).

Federal Rule of Civil Procedure 72(b) and 28 U.S.C. § 636(b)(1) set forth a district judge’s duties in connection with a magistrate judge’s report and recommendation. The district judge must “make a *de novo* determination of those portions of the report to which objection is made,” and “may accept, reject, or modify, in whole or in part, the finding or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1); *see also United States v. Remsing*, 874 F.2d 614, 617 (9th Cir. 1989). However, in the absence of timely objection(s), the Court “need only satisfy itself that there is no clear error on the

1 face of the record in order to accept the recommendation.” Fed. R. Civ. P. 72(b), Advisory Committee
2 Notes (1983); *see also United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003).

3 Neither party has timely filed objections to Magistrate Judge Stormes’ Report and Recommen-
4 dation. Having reviewed the report and recommendation, the Court finds that Magistrate Judge Stormes’
5 Report and Recommendation is thorough, well reasoned, and contains no clear error. Accordingly, the
6 Court hereby: (1) **ADOPTS** Magistrate Judge Stormes’ Report and Recommendation; (2) **GRANTS**
7 Defendant’s Motion to Dismiss Plaintiff’s Eighth Amendment claim; (3) **GRANTS** Plaintiff leave to
8 amend his complaint **within 45 days of this order**. Plaintiff is advised that his Second Amended
9 Complaint must be complete in itself without reference to any superseded pleading and contain all
10 necessary exhibits. *See* Civil Local Rule 15.1.

11 IT IS SO ORDERED.

12
13 DATED: December 4, 2012


14 Hon. Anthony J. Battaglia
15 U.S. District Judge